

#### IV. SAMPLE FORMS

##### A. [§104.78] Script: Conduct of Hearing

*[If parents and the child are represented by counsel and all required conflict of interest statements are on file, go to (4).]*

###### (1) Appointment of Attorney for Parents or Guardians

You have a right to be represented by an attorney for this selection and implementation hearing. If you want to employ a private attorney, the court will give you an opportunity to do so.

*[Or]*

The court has reviewed the financial declaration of *[name(s) of parent(s) or guardian(s)]* and finds that *[he/she/they]* *[is/are]* entitled to appointment of counsel. At this time, the court appoints *[name of attorney]* to represent *[him/her/them]*.

☛ JUDICIAL TIP: When the attorney is on the staff of a governmental agency, it is the office, not the individual attorney, that is being appointed.

*[If parent(s) waive(s) counsel, add]*

This is a serious matter. Your parental rights may be terminated at this hearing. Do you have any questions about your right to have an attorney represent you at this hearing? Understanding this right and the possible consequences of this hearing, do you want to proceed at this time without an attorney?

*[When applicable, add]*

The court now finds that the parent(s) *[has/have]* knowingly and intelligently waived *[his/her/their]* right(s) to counsel at this hearing.

*[If child is represented by counsel, go to (4).]*

###### (2) Attorney for Child

The court has read and considered the documentary material submitted by DSS that is relevant to the limited purpose of assessing the benefit, if any, of appointing counsel for the child. Would anyone like to be heard on this issue?

*[After hearing evidence, if any, on issue of child's need for attorney, add]*

The court finds, based on the facts of this case, that there is no identifiable benefit to the child that would require appointment of counsel at this time because *[give reasons]*.

[Or]

The court finds, based on the facts of this case, that there is a need to appoint counsel for the child at this time. The court appoints *[name of attorney]* to represent the child.

(3) Continuance if New Counsel Needed

The case is continued for \_\_\_ *[up to 30]* days to permit *[appointment of counsel/new counsel to become familiar with the case]*.

(4) Explanation of Procedure/Notification of Consequences

I am going to explain to you what happens at this proceeding. Today, the court will determine a permanent plan for the child, that is whether your parental rights should be terminated and *[name of child]* placed for adoption, or whether adoption should be the eventual goal without terminating parental rights, as the search for appropriate adoptive parents gets underway, or whether to appoint a guardian for *[name of child]* without terminating parental rights, or whether to place *[name of child]* in long-term foster care.

In any event, returning *[name of child]* home to the custody of *[his/her]* parents is no longer an option.

*Note:* Very often, the attorney for the parent or guardian will state that he or she has explained these matters to the clients and will go on to explain their position. Many judges encourage attorneys who appear in their courts to take this responsibility.

(5) Notice of Hearing

(a) One parent not present

*[If one parent is not present, make sure that the absent parent received notice of the hearing. If so, state]*

The court finds that notice has been given as required by law. The *[mother/father/guardian]* has failed to appear.

(b) Both parents present

The court finds that the *[mother/father/guardian(s)]*, the child, and all counsel were notified of this hearing and provided the review report as required by law.

(c) Notice attempted

The court finds that the following attempts were made to locate the [mother/father/guardian(s)]: [List attempts]. The court has reviewed the declaration of search and finds that the efforts made to locate and serve the [parents/guardians] were reasonable.

(d) Insufficient attempts at notice

The court finds that the Department has not used due diligence in attempting to locate the [parents/guardians]. The case is therefore continued for [state time period].

(6) Waiver of Advisement of Rights

[To each participant]

Did your attorney explain your rights to you?

*Note:* Hearing rights are specified in [Cal Rules of Ct 1412\(j\)](#).

Do you waive advisement of rights?

[If the answer to both is yes, go to step 8.]

(7) Advisement of Rights

You have certain rights at this hearing. These are (1) the right to see and hear all witnesses who may be examined by the court at this hearing; (2) the right to cross-examine, which means ask questions of, any witness who may testify at this hearing; (3) the right to present to the court any witnesses or other evidence you may desire; (4) the right to subpoena witnesses; and (5) the right to a hearing on the issues raised in the review report. You have the right to assert the privilege against self-incrimination [but, in any event, anything you say in this or in any other dependency proceeding may not be admissible as evidence in any other action or proceeding].

(8) Advisement re Addresses Under [Welf & I C §316.1](#)

The address that [is in the petition/you gave the court [at previous hearings/today]] will be used by the court and the social worker for all further notice unless you advise the court and the social worker of any changes in address.

See discussion in [§104.21](#).

(9) Evidence

[Court reads any written reports and states for the record all material read by the court.]

The court has read and considered and now receives into evidence the assessment report of [date], prepared by \_\_\_\_\_, consisting of \_\_\_\_\_ pages and containing the following attachments: [List].

*Note:* The court must indicate which documents it is relying on.

*[To parent, guardian, child, or other interested person]*

Now is the time for you to present any evidence or make any statement you may wish to make before the court decides to [terminate parental rights/appoint a guardian/etc.].

If the court makes findings solely on the basis of the evidence in the report, do you understand that you will have given up your right to cross-examine those who prepared the report and to deny the statements found in the report?

*[To parent, guardian, and the attorneys]*

May the court base its findings solely on the report and other documents that it has received?

*[If the answer is no, the court should orally examine or permit testimony of the child, if necessary, and other persons with relevant knowledge bearing on relevant issues. The court must allow cross-examination of any witness who testifies.]*

Now is the time for you to present any evidence or make any statement you may wish to make before the court selects a permanent plan.

*[If necessary to ascertain the child's wishes, arrange for child's testimony. Make one or more of the following findings as appropriate to permit the child's testimony in chambers:]*

(1) It is necessary to take testimony in chambers to ensure truthful testimony.

(2) The child is likely to be intimidated by a formal courtroom setting.

(3) The child is frightened to testify in front of the parents [[Welf & I C §366.26\(h\)](#)].

(10) Final Question

Do you have any questions about the court's orders or what is going to take place in the future?